

June 29, 2006

Board of Commissioners
Department of Telecommunications & Energy
Judith F. Judson, Chairman
One South Station
Boston, Massachusetts 02110

RE: Request for Advisory Opinion on Fiscal Controls for Municipal Utilities

Dear Board of Commissioners and Chairman Judson:

This is a reply to a May 30, 2006 comment letter of the Municipal Electric Association of Massachusetts, Inc. ("MEAM Letter") filed with the Department of Telecommunications and Energy ("DTE") in opposition to my advisory opinion request dated March 13, 2006 ("OIG Letter"). I urge the Commission to disregard MEAM's comments and issue the advisory opinion requested in the OIG letter.

The issue under consideration is simple. Under M.G.L. c.164, §56 ("Section 56"), the auditor of a city or the board of selectmen of a town is responsible for assuring that payments made on behalf of a municipal utility are not fraudulent, unlawful or excessive. They may disallow, in whole or in part, any claim for payment that they deem fraudulent, unlawful or excessive. My request is only that municipal auditors and accountants be given the ability to make independent, informed evaluations of the propriety of payment claims by having the authority to see supporting documents in the possession of the municipal utility.

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My request is made necessary by the fact that certain municipal utilities have refused to provide documentation to auditors and selectmen seeking to discharge their statutory responsibilities. They have, as noted in a report issued by this office, adopted “a corporate culture ...that resisted appropriate oversight.” *An Investigation of the Use of Certain Bond Funds by the North Attleborough Electric Department (“Bond Funds Report”)*(12/05), p. 15.

MEAM states that this is not an appropriate area for the DTE to exercise its authority, and that an advisory opinion is in any event an ineffectual tool for statutory interpretation. MEAM Letter, pp. 6-7. I disagree. By statute, your agency is authorized to oversee and regulate municipal power companies. M.G.L. c.164, §1F. MEAM has opposed any attempt to clarify this statute. It is not representing the public interest; it represents instead its constituency, municipal utilities. Inasmuch as municipal utilities are not willing to provide relevant information voluntarily, an advisory from the DTE instructing them to do so is required.

Finally, the MEAM Letter states that Section 56 and cases under it make it clear that the operations of a municipal utility preempt municipal governmental control. MEAM Letter, p. 7. Any action, says MEAM, by municipal finance officers with respect to the utility is purely ministerial. Auditors and accountants are required nonetheless to approve payments, with the right only to refuse payment if the request is “fraudulent, unlawful or excessive.” A ministerial “approval” renders the statute meaningless: it has no basis in objective fact. It is much more likely that the legislature included the “fraudulent, unlawful or excessive” language in Section 56 to assure that, in one respect at least, municipal utilities are accountable financially.

MEAM argues that an advisory is not required because a municipality can “contact the manager and request clarification or back-up information for a particular bill.” MEAM Letter, p. 10. This is not, however, what is happening. See, e.g., *Bond Funds Report*, p. 15 (“[W]e noted numerous instances (dating back to 1994) where NAED management asked its counsel for a legal opinion when the propriety of NAED expenditures was questioned by the Town Accountant. The basic message to the Town from these opinions was to back off.”);¹ *Credit Card and Certain Other Spending Practices at the Reading Municipal Light Department* (11/01), p.5 (“In an interview with this Office, the Town Accountant stated that he has been denied access to full disclosure of receipts,

¹ See opinions rendered by NAED counsel Rubin & Rudman, 50 Rowes Wharf, Boston, Massachusetts 02110 dated February 9, 1994; February 18, 1997; October 21, 1997; November 24, 1997; October 22, 1999; September 28, 2001; and October 15, 2004.

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credit card slips, and other documents justifying credit card purchases ... [and whenever] he has questioned [the utility's] spending activities ...he has been ignored by the General Manager.") MEAM states that my proposal will give municipalities "the unlimited authority to demand any and all documentation, at any time, without justification." MEAM Letter, p. 10. Our request asks only that an advisory be issued that will instruct municipal utilities to provide whatever documentation is required for a municipality to discharge its duty under Section 56.

Municipal utilities are protected monopolies that depend on the support of their ratepayers and the municipalities they serve. This notwithstanding, certain municipal utilities act like private corporations, disregarding even the modest safeguards included in the statute.

Our request would not be necessary if municipal utilities complied with requests for information in a spirit of cooperation. As they have not, I ask that the DTE issue an advisory as requested in my letter of March 13, 2006.

Sincerely,

Gregory W. Sullivan
Inspector General